

Message Text

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ACTION COME-00

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FM AMEMBASSY BUCHAREST

TO SECSTATE WASHDC 6522

LIMITED OFFICIAL USE BUCHAREST 3498

FOR COMMERCE

E.O. 11652: N/A

TAGS: BDIS, RO

SUBJ: TRADE COMPLAINT: ERIE FOUNDRY

REFS: A) BUCHAREST 3357; B) STATE 190725

1. MASINEXPORT REPS AGAIN CALLED EMBOFFS TO THEIR OFFICES ON SEPTEMBER 25 BEFORE RECEIPT REFTEL B TO DISCUSS ERIE FOUNDRY SITUATION WHICH, ACCORDING TO MASINEXPORT, HAS DETERIORATED SINCE REFTEL A WAS WRITTEN. BASIC DISPUTE AT THIS STAGE CENTERS AROUND VALIDITY OF CONTRACT SIGNED IN APRIL '73 BY R.E. MYTINGER, ERIE SALES MANAGER, AND MASINEXPORT. MASINEXPORT VIEW IS THAT CONTRACT SIGNED BY MYTINGER IS LEGAL, VALID ONE BINDING ON ERIE. ERIE POSITION AS EXPLAINED IN NUMEROUS TELEXES FROM JAMES A. CURRIE, PRESIDENT OF FIRM, IS THAT CONTRACT, TO BE VALID, MUST BE SIGNED BY "DULY ELECTED OFFICER OF COMPANY." IN ONE RECENT TELEX, CURRIE STATED, "YOU (MASINEXPORT) CAREFULLY TOLD HIM (MYTINGER) AT THE TIME, MORE THAN ONCE, THAT IN SPITE OF HIS EXPRESSED BELIEF THAT I WOULD NOT AGREE WITH TERMS OF APRIL CONTRACT, IT WOULD BE APPROPRIATE FOR HIM TO SIGN SINCE IF I DID NOT AGREE WITH THE SIGNED CONTRACT IT WOULD BE EASY NOT TO PUT THE CONTRACT INTO EFFECT BY FAILING TO COMPLETE THE FINANCIAL ARRANGEMENTS."

2. "FINANCIAL ARRANGEMENTS" NOTED ABOVE REFER APPARENTLY TO EXIMBANK FINANCING OF PURCHASE PACKAGE, AND CONTRACT READS, "THE PRESENT CONTRACT BECOMES EFFECTIVE ONLY AFTER ERIE FOUNDRY LIMITED OFFICIAL USE

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CO. - USA - AND MASINEXPORT, BUCHAREST HAVE OBTAINED THE

RELEVANT IMPORT AND EXPORT LICENSES REGARDING THE MACHINES MAKING ITS OBJECT AND THE CONFIRMATION OF FINANCING FROM EXIMBANK AND RESPECTIVELY OF THE ROMANIAN BANK FOR FOREIGN TRADE - BUCHAREST." MASINEXPORT CLAIMS THAT FINANCIAL ARRANGEMENTS VIRTUALLY COMPLETE IN THAT EXIMBANK ISSUED PRELIMINARY COMMITMENT FOR PACKAGE AND SINCE FINANCIAL TERMS INCLUDED IN CONTRACT WERE THOSE CONTAINED IN LETTER FROM PITTSBURGH NATIONAL BANK, COMMERCIAL BANK UNDERWRITING SALE, TO ROMANIAN BANK FOR FOREIGN TRADE.

3. ADDITIONAL ARGUMENT CITED BY ERIE IN DEMANDING FIVE PERCENT PRICE INCREASE INVOLVES "FORCE MAJEURE INFLATIONARY COSTS." MASINEXPORT POSITION IS THAT INFLATION IS NOT INCLUDED AS FACTOR UNDER CONTRACT FORCE MAJEURE CLAUSE.

4. LATEST TELEX FROM ERIE TO MASINEXPORT (SEPTEMBER 21) INDICATES ERIE IS DROPPING WORK ON ORDER IN VIEW MASINEXPORT'S REFUSAL ACCEPT NEW TERMS. MASINEXPORT STILL DESIROUS OF COMING TO AGREEMENT WITH ERIE AND HAS REPEATEDLY REQUESTED ERIE TO SEND QUALIFIED OFFICER TO BUCHAREST TO WORK OUT PROBLEMS. IF ERIE DOES NOT COME T BUCHAREST, MASINEXPORT INFORMED EMBASSY IT PREPARED TO SUBMIT CASE TO INTERNATIONAL CHAMBER OF COMMERCE IN PARIS FOR ARBITRATION ACCORDING TO TERMS OF CONTRACT AND TO SEEK COMPENSATION FOR COST DIFFERENCE BETWEEN ORIGINAL LEVAL OF CONTRACT AND AMOUNT SAME FORGING PRESSES WILL NOW COST MASINEXPORT IN CONTRACT TO BE NEGOTIATED WITH SEPARATE FIRM. MASINEXPORT APPEARS DETERMINED TAKE CASE TO ARBITRATION, AND OVERALL SITUATION CAN ONLY HAVE DETRIMENTAL EFFECT ON ROMANIAN-US TRADE RELATIONS.

5. WE WILL RESPOND TO ANY FURTHER GOR APPROACHES ALONG LINES REFTEL B; HOWEVER, WE WOULD URGE COMMERCE TO CONTINUE EFFORTS TO ENCOURAGE VISIT TO ROMANIA BY ERIE OFFICIAL. PERSONAL VISIT, IN OUR EXPERIENCE, IS BY FAR MOST EFFICIENT AND DESIRABLE WAY TO RESOLVE THIS TYPE OF PROBLEM WITH ROMANIAN FTO'S. IN MEANTIME, ENGLISH FIRM HAS CALLED ON MASINEXPORT HOPING TO TAKE BUSINESS IF ERIE CONTRACT FALLS.
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